



# Bencher Public Minutes

Public Minutes of the Four Hundred and Ninety-Sixth Meeting of the Benchers of the Law Society of Alberta (the “Law Society”)

December 5, 2019

Hotel Macdonald, Edmonton, Alberta

9:00 am

<b>Benchers present</b>	Rob Armstrong, President Kent Teskey, President-Elect Ryan Anderson Arman Chak Corie Flett Elizabeth Hak Bill Hendsbee Cal Johnson Linda Long Jim Lutz Barb McKinley Bud Melnyk Walter Pavlic Corinne Petersen Stacy Petriuk Robert Philp Kathleen Ryan Darlene Scott Deanna Steblyk Margaret Unsworth Cora Voyageur Ken Warren Louise Wasylenko Nate Whiting
<b>Executive Leadership Team members present</b>	Elizabeth Osler, Executive Director and Chief Executive Officer Cori Ghitler, Deputy Executive Director and Director, Professionalism and Policy Paule Armeneau, Director, Regulation, and General Counsel Nadine Meade, Chief Financial Officer Andrew Norton, Chief Information Officer and Director, Business Operations



	David Weyant, President and Chief Executive Officer, Alberta Lawyers Indemnity Association
<b>Staff present</b>	Barbra Bailey, Policy Counsel Nancy Bains, Associate General Counsel Colleen Brown, Manager, Communications Nancy Carruthers, Manager, Professionalism and Ethics Ruth Corbett, Governance Administrator Shabnam Datta, Policy Counsel Koren Lightning Earle, Indigenous Initiatives Liaison Nicholas Maggisano, Manager, Conduct Tina McKay, Senior Manager, Business Operations Jody Saunders, Tribunal Counsel Laura Scheuerman, Governance Assistant Avery Stodalka, Senior Communications Advisor Stephen Ong, Business Technology
<b>Guests and observers present:</b>	David Hiebert, Canadian Bar Association, Alberta Branch Nonye Opara, Pro-Bono Law Alberta Sandra Petersson, Executive Director, Alberta Law Reform Institute Christine Sanderman, Executive Director, Legal Education Society of Alberta

*Secretary's Note: The arrival and/or departure of participants during the meeting are recorded in the body of these minutes.*

The meeting was called to order at 9:05 a.m.

	Item
<b>1</b>	<p><b>Opening Remarks from the Chair</b></p> <p>Mr. Armstrong opened the meeting by acknowledging that the land on which we gathered is Treaty 6 territory and a traditional meeting ground and home for many Indigenous Peoples, including Cree, Saulteaux, Blackfoot, Métis, and Nakota Sioux.</p> <p>Mr. Armstrong welcomed Benchers and guests and acknowledged new Federation of Law Societies of Canada ("FLSC") representative, Carsten Jensen, who was unable to attend today. Mr. Maggisano was welcomed to his first Bencher meeting.</p>
<b>2</b>	<p><b>Election of the President-Elect and the Executive Committee</b></p> <p>Documentation circulated for this item included the Statements of Intention, approved election procedures, and the applicable Rules of the Law Society (the "Rules"). Mr. Armstrong advised the Benchers that Ms. Scott put her name forward for President-Elect.</p>



Mr. Armstrong called for nominations from the floor in accordance with Rule 27(1) and there were none.

**Motion:**

**To close the nominations for President-Elect.**

**Seconded  
Carried**

Ms. Scott was acclaimed as the President-Elect pursuant to Rules 27(1)(b) and 28(2)(a). Ms. Scott was invited to address the Benchers and in her remarks Ms. Scott emphasized her confidence in the new Executive Leadership Team (“ELT”) and her appreciation for Law Society staff and the work they do. Ms. Scott recognized the work being done at the Board table and the Benchers’ engagement in Big Issues and their support for the Strategic Plan. Ms. Scott highlighted the Law Society’s leadership in Canada and internationally through its early intervention program, improvements to the conduct process, the adjudication and decision writing. Lawyer wellbeing, equity and diversity are important priorities and the Law Society’s response to the results of the articling survey will explore real and effective solutions to challenging issues. Ms. Scott encouraged the Law Society and the Benchers to be bold and innovative in their approach and she expressed her honour and privilege to serve the public and the profession.

Mr. Armstrong then outlined the procedures for the election of the Executive Committee, read the Statements of Intention and called for nominations from the floor. There were no new nominations.

**Motion:**

**To close the nominations for the Executive Committee.**

**Seconded  
Carried**

The election for the Executive Committee proceeded. Following three rounds of voting the successful candidates for the four elected positions on the Executive Committee were (in alphabetical order) Bill Hendsbee, Cal Johnson, Deanna Steblyk, and Ken Warren. The Lay Benchers appointed Louise Wasylenko to the Executive Committee for one year.

**3 Appointment of the Bencher-at-Large to the Nominating Committee**

Mr. Armstrong advised the Benchers that the process for the appointment of the Bencher-at-large to the Nominating Committee is that the Executive Committee makes the recommendation. The Executive Committee will discuss the matter following the Board meeting and a recommendation will then be circulated by e-ballot to the Benchers.



#### 4 2020 Business Plan and Budget

Documentation for this item was circulated with the meeting materials. Ms. Ryan, Chair of the Audit and Finance Committee (“AFC”), presented the 2020 Business Plan and Budget, highlighting the following:

- The draft Budget was reviewed by the AFC at three meetings in October 2019 and then by the Benchers at the special budget meeting on November 6, 2019. Ms. Ryan advised the Benchers that the CFO and ELT provided timely, accurate and useful information throughout the process.
- In the budget meetings, the AFC and the Benchers had discussed whether the practice fee should decrease this year; however, they ultimately supported a static practice fee, ensuring funds would be available to address identified risks, particularly the part time fees project and the enhanced entry level competency program through the Canadian Centre for Professional Legal Education (“CPLED”).
- Ms. Ryan commended ELT and particularly the CFO for their work on the 2020 Business Plan and Budget and thanked the Benchers and AFC for their review and feedback.

Ms. Meade provided an overview of the 2020 Budget, highlighting the following:

- Process improvements this year included the requirement for departments to submit business plans to support staffing changes.
- AFC and the Benchers provided invaluable feedback on the themes of the Budget and associated risks; i.e., merchant banking fees, the CPLED program subsidy, part time fees, insurance defense costs, salaries, surplus, and return on investment.
- 2020 will see an increased focus on the Law Society’s sustainability model and a formal surplus policy will be implemented.
- Ms. Meade noted the Benchers desire to achieve more alignment between the budget process and the Strategic Plan with longer term budgeting, and added that ELT is committed to continuously reviewing and refining the process.
- Ms. Meade thanked everyone for their support of the budget process and throughout her first year as CFO of the Law Society.

**Motion:**

**To approve the 2020 Law Society of Alberta Business Plan and Budget as presented and to set the Practice Fee at \$2,600.**

**Seconded  
Carried unanimously**

#### 5 Indigenous Initiatives Liaison Report

A report on Indigenous initiatives at the Law Society from Ms. Lightning Earle, Indigenous Initiatives liaison (“IIL”), was circulated with the meeting materials. An Indigenous



Advisory Committee is currently developing goals and objectives for 2020 and beyond that will take reconciliation to the next level for the Law Society. Ms. Lightning Earle advised the Benchers that this was her last ILL report and she encouraged the Law Society to build on the foundation to create long term plans for reconciliation.

On behalf of the Benchers, Mr. Armstrong thanked Ms. Lightning Earle for being the first ILL at the Law Society, congratulated her on her new position and on receiving a Women in Law Leadership Award (Leader of Tomorrow). The Benchers presented Ms. Lightning Earle with the traditional gift of a blanket.

## 6 Timeline Updates

### 6.1 Big Issues

### 6.2 Engagement

### 6.3 2017-2019 Strategic Plan Review

Ms. Osler presented the Big Issues and Engagement timelines and summarized the updates. Additionally, the 2017-2019 Strategic Plan Review was prepared to provide Benchers with a summary of the strategies, programs and initiatives accomplished over the last three years. A timeline for the new Strategic Plan accomplishments will be developed.

## 7 2020-2024 Strategic Plan and Regulatory Objectives

Documentation for this item was circulated with the meeting materials. Mr. Armstrong summarized the process followed and thanked Benchers for their review and feedback on earlier drafts, noting that their changes were incorporated. He thanked the Strategic Plan Task Force and Ms. Bailey for being instrumental in the work.

**Motion:**

**That the Benchers approve the Strategic Plan for 2020-2024, as proposed.**

**Seconded**

**Carried unanimously**

Mr. Armstrong presented the Regulatory Objectives, again thanking the Benchers for their review of earlier drafts, confirming that changes were incorporated.

**Motion**

**That the Benchers approve the Statement of Regulatory Objectives, as proposed.**

**Seconded**

**Carried unanimously**



## 8 Committee Restructuring

Documentation for this item was circulated with the meeting materials. Mr. Teskey presented the proposal for changes to the committee structure that are intended to focus the committee work on current strategic issues.

The Benchers considered the key elements of regulatory reform, lawyer competence, and equity, diversity and inclusion, and how best to accomplish these strategic goals. Discussion included whether access from the public point of view is being addressed and it was noted that much of the work on Law Society initiatives contains access elements that will become more evident over time.

### **Motion:**

**That the Benchers approve the following changes to the structure of Bencher committees for 2020:**

- **Transition the Policy Committee to the Policy and Regulatory Reform Committee;**
- **Replace the Practice Foundations Task Force with the following two committees:**
  - **Lawyer Competence Committee**
  - **Equity, Diversity and Inclusion Committee; and**
- **Disband the Innovating Regulation Task Force.**

**Seconded  
Carried unanimously**

## 9 Executive Committee Rule Amendment

Mr. Armstrong recused himself from the meeting.

Documentation for this item was circulated with the meeting materials. Mr. Teskey presented the proposal for a Rule amendment that would allow the immediate past President to sit on the Executive Committee upon their resignation as a Bencher. The rationale for this Rule change was that the past President's institutional knowledge would be invaluable to the work of the Law Society. The past President would not attend Bencher meetings and would not hold a voting position on the Executive Committee. Mr. Teskey noted that this issue has been discussed at the Board table in the past.

The Benchers supported the proposal, noting that it addresses succession and aligns with the strategic goal to improve business practices. The new practice will be monitored to ensure expectations and time commitments are reasonable.



**Motion:**

**That the Benchers approve the amendments to Rule 26, as proposed.**

**Seconded  
Carried unanimously**

Mr. Armstrong rejoined the meeting and was advised of the Benchers' decision.

**10 Practice Foundations Task Force (“PFTF”) Update**

A final report from the PFTF was circulated with the meeting materials. The focus of the PFTF meetings was on the launch of the Respectful Workplace Model Policy and the recruitment and formation of the advisory committees for lawyer competence and equity, diversity and inclusion. The work of the advisory committees will feed into the work of the two new Board committees which replaced the PFTF (see agenda item 8).

**11 Lawyer Directory**

**Presentation**

Ms. McKay's provided a detailed online demonstration of how the Lawyer Directory works.

**11.1 Roll, Register and Lawyer Directory Rule Amendments**

Documentation for this item was circulated with the meeting materials. Ms. Datta presented the Rule changes that are intended to modernize and enhance the Lawyer Directory and provide the necessary and appropriate information to the public, balanced with lawyers' privacy and confidentiality. Highlights and discussion included the following:

- Ms. Datta confirmed that the definition of what is included in disciplinary information has not been broadened; for example, citations in the definition still means citations that have been directed to a hearing and are then made available to the public.
- The Benchers discussed proposed Rule 45(5) which provides for the Executive Director to allow, limit or refuse disclosure. Ms. Armeneau confirmed that it is important to ensure that disclosure can be refused, if necessary, to ensure private matters are not disclosed.

**Motion:**

**That the Benchers approve the amendments to Rules 1, 39, 40, 40.1, 44, 45, 154, and 159.1, as proposed in Appendix “A” of the meeting materials, subject to two minor, non-substantive changes to be incorporated by Ms. Datta.**

**Carried by greater than a 2/3 majority  
Two opposed**



## 11.2 Rules 106 and 107 Amendments

Documentation for this item was circulated with the meeting materials. Ms. Carruthers and Ms. Bains presented the proposal for amendments to Rules 106 and 107 and consequential changes to the *Publication and Redaction Guideline for Adjudicators* being recommended by the Policy Committee. Highlights and discussion included the following:

- The purpose of the amendments is to simplify the current Rules, facilitate the changes to the Lawyer Directory, and provide open and clear guidance on the publication of hearing outcomes.
- Ms. Carruthers detailed a number of additional amendments to the proposed Rule changes since the Policy Committee's review, suggested by Mr. Johnson prior to the Benchers meeting. Specifically, proposed Rule 106(6) was to be revised to remove the reference to hearings or appeals held wholly or partly in private. The Rule was intended to authorize the Executive Director to publish a member's name and a summary of the hearing outcome where no hearing report is available for publication. As well, for consistency with other Rule amendments, proposed Rule 106(2)(b) was amended to refer to section 85 of the Act rather than section 85(1).
- The Benchers discussed a concern raised in relation to paragraph 53 of the *Publication and Redaction Guideline for Adjudicators*, with respect to the publication of the names of firms, and it was noted that this was also a topic of discussion at the Policy Committee. Following their discussion, the Benchers directed staff to take the *Publication and Redaction Guideline for Adjudicators* back to the Policy Committee for more work on this aspect.

**Motion:**

**That the Benchers approve the amendments to Rules 106 and 107, as set forth in Appendix "A" of the meeting materials, subject to the amendments to 106(2)(b) and 106(6) discussed.**

**Carried by greater than a 2/3 majority  
One opposed**

## 12 Adjudicator Training Guideline and Adjudicative Appointment Guideline

Documentation for this item was circulated with the meeting materials. Ms. Saunders presented the proposal for two new guidelines, on the recommendation of the Policy Committee. Highlights and discussion included the following:

- Law societies are expected to comply with the expectations for adjudicator training in the FLSC's National Curriculum. The Law Society leads in this area, with the Adjudicator Training Program ("ATP") addressing 38/40 of the core topics of the FLSC National Curriculum and the marketing of the ATP to other law societies and regulators.





- The Benchers' discussion focused on duplication in sections 29, 30 and 33 with respect to adjudicators who have not completed the ATP. Ms. Saunders was directed to review and adjust the wording to remove any duplication.

**Motion 1:**

**That the Benchers approve the Adjudicator Training Guideline, subject to further changes to paragraphs 29, 30, and 33 to be made by Tribunal Counsel to remove any duplication.**

**Seconded  
Carried unanimously**

*Secretary's note: following the meeting, Tribunal Counsel reviewed her notes and prior versions of the Guideline and confirmed that paragraph 33 should have been removed, as it was duplicative with paragraphs 29 and 30. Prior versions had paragraph 33 addressing an additional point, which point was ultimately dropped, removing the need for this remainder of the paragraph as it was sufficiently caught by the two prior paragraphs.*

**Motion 2:**

**That the Benchers approve the Adjudicative Panel Appointment Guideline as proposed.**

**Seconded  
Carried unanimously**

*Secretary's note: the Adjudicative Panel Appointment Guideline replaced the Hearing Committee Appointment Protocol.*

### **13 Conduct Committee Panel Guideline**

Documentation for this item was circulated with the meeting materials. Ms. Bailey and Mr. Maggisano presented the proposal for a new *Conduct Committee Panel Guideline*, amendments to Rule 88, and consequential amendments to the *Mandatory Conduct Advisory Guideline*. The Policy Committee's recommendations were incorporated into the final drafts. Highlights and discussion included the following:

- The proposed changes are intended to update and more accurately reflect current processes.
- The Benchers discussed paragraph 14 of the *Mandatory Conduct Advisory Guideline* regarding the confidentiality of section 53 reports. Mr. Maggisano clarified that during the investigation stage the lawyer subject to a complaint would be entitled to exhibits to the report, which contain the facts; however, not the report itself, which contains the Law Society's internal analysis and, as such, is privileged.
- The question was asked whether Benchers who sit on the conduct panel prior to the Mandatory Conduct Advisory ("MCA") should be excluded in the same way that



Benchers who complete the MCA do not sit on the panel that reviews the MCA report. Mr. Maggisano advised the Benchers that the Policy Committee had discussed this question as well and determined that the distinction is that the Bencher doing the MCA is recommending the result whereas that is not the case at the Conduct Committee stage prior to the MCA; i.e., often it's the case where the Bencher on the Conduct Panel is best placed to know the Conduct Committee's concerns.

**Motion 1:**

**That the Benchers approve the new Conduct Committee Guideline, as proposed.**

**Seconded  
Carried unanimously**

**Motion 2:**

**That the Benchers approve the amendments to Rule 88, as proposed.**

**Seconded  
Carried unanimously**

**Motion 3:**

**That the Benchers revoke the "Conduct Panel Guideline" and "Factors to be Considered – Section 58 Referral Guideline."**

**Seconded  
Carried unanimously**

**Motion 4:**

**That the Benchers approve consequential amendments to the Mandatory Conduct Advisory Guideline to:**

- a) Rename the "Conduct Panel Guideline" to the "Conduct Committee Guideline", and**
- b) Reflect the proposed amendments to Rule 88(6) respecting Mandatory Conduct Advisories.**

**Seconded  
Carried unanimously**

**14 President's Report**

Mr. Armstrong had no remarks to add to his report which was circulated with the meeting materials.

**15 Leadership Report**

The Leadership Report was circulated with the meeting materials. Ms. Osler reported the following:

- Ms. Andrea Menard will replace Ms. Lightning Earle as the Law Society's ILL in the new year.



- The format of the Podcast has evolved and will be developed further in 2020 to include interviews with external stakeholders.
- The timelines for Big Issues and Engagement, as well as the new budget process, and the Law Society’s new approach to strategically viewing its work through a sustainability lens were discussed.
- Ms. Osler thanked the Benchers for their approval of the new and revised guidelines.
- Ms. Osler commended the Communications team for their work to develop materials and webinars on various topics for the profession, including the information tools on the new merchant banking process.
- Ms. Osler thanked Mr. Norton and his team for managing the Law Society’s move to new space and advised that there will be an official opening ceremony on February 19, 2020.
- Ms. Osler thanked everyone for their support during her first year as CEO and Executive Director.

**16 CONSENT AGENDA**

The consent agenda consisted of the September 26, 2019 Public Bencher minutes which were circulated with the meeting materials.

**Motion:**

**That the Benchers approve the September 26, 2019 Public Bencher meeting minutes, as circulated.**

**Seconded  
Carried**

**17 Reports for Information**

The following reports were circulated with the meeting materials for information:

- 17.1 Alberta Law Foundation report
- 17.2 Alberta Law Reform Institute report
- 17.3 Bencher Election Task Force report
- 17.4 Canadian Bar Association report
- 17.5 Federation of Law Societies of Canada report
- 17.6 Legal Education Society of Alberta report
- 17.7 Pro Bono Law Alberta report

**18 Other Business**

There was no other business.

**19 Adjournment**

The public meeting was adjourned at 2:30 pm.